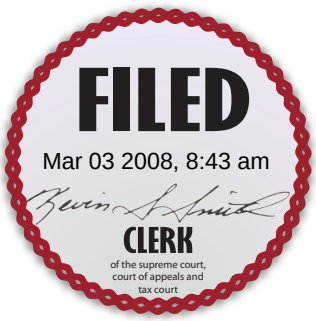

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IN THE
COURT OF APPEALS OF INDIANA

DOUG PIRTLE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0709-CR-510
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Patricia J. Gifford, Judge
Cause No. 49G04-0608-FC-150192

MARCH 3, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

HOFFMAN, Senior Judge

Defendant-Appellant Douglas Pirtle appeals his conviction in a bench trial of intimidation as a class C felony. We affirm.

The sole issue for our review is whether the there is sufficient evidence to support Pirtle's conviction.

At 7:45 a.m. on August 12, 2006, Pirtle was driving eastbound on Ruth Drive when he turned left in front of Sherri Neese, who was driving westbound. Neese braked to avoid a collision and honked her horn. Pirtle heard the horn as he made the turn. When Neese arrived home, she looked in the rearview mirror and saw Pirtle sitting in his car in her driveway. Pirtle held up a gun and shouted obscenities at Neese. Pirtle was subsequently convicted of class C felony intimidation. He now appeals.

Our standard of review for sufficiency of the evidence claims is well settled. We will not reweigh the evidence or judge the credibility of the witnesses, and we will respect the jury's exclusive province to weigh conflicting evidence. *Cline v. State*, 860 N.E.2d 647, 648 (Ind. Ct. App. 2007). Considering only the evidence and the reasonable inferences supporting the verdict, our task is to decide whether there is substantial evidence of probative value from which a reasonable jury could find the defendant guilty beyond a reasonable doubt. *Id.* at 649.

Indiana Code Section 35-45-2-1 provides in relevant part that a person who communicates a threat to another person with the intent that the other person be placed in fear of retaliation for a prior lawful act commits intimidation. The offense is a class C felony if the defendant draws or uses a deadly weapon while committing the offense. Ind. Code § 35-45-2-1(b)(2).

Here, the charging information alleged that Pirtle impliedly threatened to shoot Neese with the intent that she be placed in fear of retaliation for the prior lawful act of honking a horn in her vehicle to avoid a collision caused by Pirtle's actions. At trial, the following colloquy occurred:

> Counsel: And you indicated that he had turned in front of you, is that correct?
>
> Neese: That is correct.
>
> Counsel: What did you do when he did that?
>
> Neese: Blew my horn.
>
> Counsel: Okay. Did you at anytime apply your brakes.
>
> Neese: Oh, yes, of course – otherwise I would have hit him.
>
> Counsel: So when you – what was your purpose in blowing your horn?
>
> Neese: Just knee jerk reaction to somebody turning in front of you and you have to slam on the brakes to keep from hitting them.
>
> Counsel: After you blew your horn, what did the defendant do?
>
> Neese: He had already turned into the parking lot . . . .

Pirtle argues that that there is insufficient evidence to support his conviction. Specifically, Pirtle's sole argument is that the State failed to prove that Neese committed a prior lawful act. In support of his argument, Pirtle directs us to Indiana Code Section 9-19-5-2, which provides as follows:

> The driver of a motor vehicle shall, when reasonably necessary to ensure safe operation, give audible warning with the horn on the motor vehicle but may not otherwise use the horn when upon a highway.

According to Pirtle, because Neese honked her horn as a "knee-jerk reaction," her use of the horn was illegal.

However, we agree with the State that the evidence in this case reveals that Neese honked her horn and put on her brakes at approximately the same time as she attempted to avoid a collision with Pirtle as he turned in front of her. This evidence supports a reasonable inference that Neese's honk was reasonably necessary to ensure safe operation, and we find sufficient evidence to support Pirtle's conviction.

Affirmed.

DARDEN, J., and VAIDIK, J., concur.